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Current Topics.

The Michaelmas Sittings.

MICHAELMAS Law Term began on 12th October with what looks like a general reduction in the volume of litigation as compared with the list for the corresponding term of last year. In the King's Bench Division there is a total of 345 causes for trial, as compared with 477 last year at this time. Long non-juries number 128 (183 last year), short non-juries 204 (271 last year) and short causes 13 (11 last year). In the Chancery Division the total figure is 61 causes (121 last year) and 54 company matters. Probate, Divorce and Admiralty continue to show vigour, the total in that division, mainly divorce, being 2,430 defended cases, 977 undefended cases and 6 Admiralty actions. In the Divisional Court the total figure is 109, as against 152 last year, 31 being in the Revenue Paper and 58 in the Divisional Court List. There are 7 housing appeals, 12 in the Special Paper and 1 under the Public Works Facilities Act, 1930. In the Court of Appeal the total is 127, as against 182 last year; 15 appeals are from the Chancery Division, 3 from the Probate Division, 78 from the King's Bench Division, 11 Revenue appeals, 2 Admiralty appeals, 5 under the Workmen's Compensation Acts from the county courts and 15 others from the county courts.

Town and Country Planning Bill, 1944.

THE Council of the Chartered Surveyors' Institution has presented to the Minister of Town and Country Planning and the Minister of Reconstruction a final memorandum of observations on the Town and Country Planning Bill, 1944. In its interim memorandum the Institution stated that it was opposed to the proposal contained in the Bill that the value of any interest in land purchased pursuant to a notice to treat served at any time within a period of five years from the passing of the Act should be ascertained by reference to prices current at 31st March, 1939. The Institute repeats its recommendation that except in the case of bombed sites—for which a further recommendation was made—the basis of compensation should be the market value of the property at the date of the notice to treat, any appreciation or depreciation in value due to public expenditure on war works since 1939 being excluded in the assessment of such compensation. The Institution adds that a similar principle appears in s. 9 (3) of the Agriculture (Miscellaneous Provisions) Act, 1941, which authorises the Minister of Agriculture to buy requisitioned agricultural land. The present Town and Country Planning Bill excepts, under cl. 46, owner-occupiers of small houses and owner-occupiers of agricultural land and buildings. The Institution ask what justification can there be for limiting justice to selected classes? While it was essential under the War Damage Act to fix a basis for compensation in order that the claims might be dealt with, and it was not unreasonable—particularly in the case of properties destroyed during the earlier period of bombing—to exclude from compensation any appreciation due to the war, experience has shown that the assessment of compensation under this Act operates very unfairly in certain instances. Is it proposed to perpetuate and still further increase these inequities under the Town and Country Planning Bill? The memorandum quotes a number of examples of inequity under the War Damage Act which, it is stated, this method of compensation occasions. The Institution reiterates the recommendation contained in its interim memorandum, namely, that in the case of bombed sites, the compensation for compulsory acquisition should not be less than the value after the incident as determined under the War Damage Act, 1943. It repeats that the valuers who will be expected to implement the proposal during the five years from the commencement of the Act which is envisaged in the present provisions of the Bill, will be largely men who have returned from the Forces, and who have either no conception of the market conditions of 1939 or, as a result of their war service, cannot now relate their pre-war experience to the market conditions of any particular year. The Institution has no objection in principle to the compulsory purchase of extensive "blitzed" or "blighted" areas and their surrounding "replacement" areas, but it repeats that it cannot support procedure which, if adopted, would enable the service of notices to treat to be dispensed with. In the case of property not the subject of claim under the War Damage Act, it is said that notice could be served on the occupier, with a legal obligation to pass on to the landlord, and a similar obligation on the latter in turn to pass on to any superior landlord. In the opinion of the Institution notices to treat should be served on all persons having an interest in the land, to prevent their property being taken away without their knowledge or without any opportunity of inspection which is essential for fair assessment of compensation. The Institution protests against cl. 33, which would appear to endow the Minister with power, without any provision for appeal, to relax or suspend certain provisions of public Acts of Parliament. After strictures on what it calls the tendency in recent years for Acts of Parliament to be drafted in language which is unintelligible to the layman, and almost equally unintelligible, without intense study, to the professional man, it mentions "the equally regrettable practice of legislation by reference." The present Town and Country Planning Bill contains references to no less than thirty-four previous Acts (some in series), including, as the earliest, the Small Tenements Recovery Act of 1838, and ranging through such Acts as the Lands Clauses Consolidation Act of 1845, the Inclosure Acts of 1845–1882, the Burial Act of 1857 and the Telegraph Acts of 1863–1878, to the Town and Country Planning (Interim Development) Act of 1943.

Law and Liberty.

AT the eleventh annual meeting of the Law Council of Australia on 29th April, 1944, the President, Mr. DAVID MAUGHAN, K.C., said that he had initiated the practice of communicating with societies in other parts of the world whose objects were similar to their own and he hoped that this idea would be developed and bear fruit in the future. Another topic that had engaged public attention recently and which interested every citizen of the Commonwealth, both poor and rich, was the encroachment upon valued traditional principles of the common law—the liberty of the subject and the right to free expression of opinion. While these rights were, of course, relative and, in time of war, must be subject to stricter control than in time of peace, they were still the very basis of democratic government. It came as a distinct shock to the community, for instance, to learn that correspondence between civilians who were unconnected with the Services or with the war effort was being opened as a matter of course and the contents of their letters communicated to other Government departments than the censorship. This was not a political nor a party question, and he felt it his duty as President of the Council to protest, on behalf of the public and the profession, against serious interference with these rights of citizens. The practice of law-making by regulations issued by the Governor-General in Council instead of by Act of Parliament had continued during the year and protests against the practice had been disregarded. It was hoped by many that in the bill proposing to amend the Constitution some restriction would be placed upon this practice, but all that had been done in this respect (in addition to a provision for disapproval by either House of Parliament) was to make it compulsory to notify all members of Parliament of the contents of new regulations. Even this so-called "safeguard" might be omitted if the Governor-General declared that the regulation was of an urgent character. One function of the legal profession was to act as a watchdog safeguarding the interests of citizens as a whole. While lawyers had no special interests distinct from other citizens, they had a training and experience which threw a responsibility upon them to speak out in defence of the basic rights of citizens when they saw them in danger.

He trusted that the Council would always recognise that responsibility. We are indebted to the *Law Institute Journal* of June, 1944, for a full report of Mr. MAUGHAN's observations, many of which might be applied, *mutatis mutandis*, to conditions in this country.

Delegated Legislation.

A BRITISH view on one of the topics dealt with by the President of the Australian Law Council was given in the October issue of *Accountancy* by Sir LYNDEN MACASSEY, K.B.E., K.C., LL.D. He wrote that the fundamental fact that had to be accepted by the most intransigent opponent of departmental law-making was that Parliament under modern conditions of pressure had not in peace-time either the time or the inclination, or the expert knowledge, or the organisation to consider and determine both the principles of complicated legislation, and also the many details of their practical application. The fact had to be faced that unless the present organisation and procedure of Parliament were modernised and standing committees established consisting of members who had or were prepared to acquire experience in particular spheres of legislation, and were willing to give the time to framing for Parliament's subsequent approval the detailed machinery of Acts, with, of course, the advice and assistance of the Government departments concerned, the only alternative was the delegation of that responsibility to those Government departments notwithstanding the resultant dangers to liberty and freedom. What then was the protection afforded to the lieges against the danger of their freedom and liberty being whittled away by laws made by Government departments? The answer was—very little indeed. As a means of assuring the nation protection against any subtle invasion of public or private liberty the procedure of annulment by "prayer" was singularly ineffective. A representative Committee presided over by LORD DONOUGHMORE, who, at the time, was the very experienced Chairman of the House of Lords ("The Powers of Ministers Committee") made a report in 1932 and recommended the setting up of a Joint Committee of both Houses to inform them of the general character of the departmental laws that were being laid before Parliament without however going into their merits. The report was pigeon-holed, and in that Parliament submissively acquiesced. As to the Select Committee which the Government now proposed to appoint to consider every Statutory Rule or Order laid or laid in draft before the House, with the view to determining whether the special attention of the House should be drawn to it on any of certain stated grounds, Sir LYNDEN MACASSEY commented that it was open to no small measure of doubt, whether the Committee could adequately operate to protect constitutional liberty having regard to their extremely limited terms of reference. He added that the protection against bureaucratic legislation which the courts of law could afford was strictly limited. In regard to departmental-made laws, the courts had only power, using LORD BACON's phrase: "*jus dicere* and not *jus dare*, to interpret law and not to make law." As to post-war prospects, Sir LYNDEN MACASSEY wrote that little inquiry was needed to show, and show convincingly, that it would be impossible for industries to re-establish their home trade, and more particularly their export trade, unless very many of the shackles of war-time restrictions are struck off. This did not imply any obstinacy to recognise that some controls which now exist must either in their present or in some modified form be continued after the war, for example, to prevent inflation and profiteering, and ensure fair distribution of goods and commodities which may be in short supply, and the most nationally advantageous allocation of materials and labour. Yet no machinery had been set up by Parliament to consider how many of the controls can and should be dispensed with and how far freedom of action, now crippled by them, could be restored. The article provides food for thought, and it is earnestly to be hoped, for early action.

War Damage in London.

IN a public statement on 3rd October, 1944, Sir MALCOLM EVE, K.C., said that the fly-bomb attacks had caused a serious housing situation in London and that the expedients to meet the situation had already been stated as the repair of damaged houses; the requisitioning, and, where necessary, some work of adaptation, of empty houses; and the provision of huts. In his view far the greatest contribution to success in this campaign was speed in the repair of houses. The Government was determined that in London no work should be permitted which was not absolutely essential. That meant that in London this winter—for at least six months—no work, other than war damage work, should be done unless it was essential, for instance, from a sanitary or structural point of view. From that day in the London Civil Defence Region that amount would be reduced to £10 in one year, and an order had been made under Defence Reg. 56A accordingly. In order to ensure that the scheme could be quickly administered licences for expenditure of any amount over £10 up to £100 would be under the control of the local authorities. For anything above that sum application would continue to be made to the Ministry of Works. The granting of licences for anything but war damage repair would be extremely rare. It was not only to non-war-damage work that the £10 licence limit would apply. It would operate in respect of privately-placed war damage work as well, and under precisely the same conditions. They were going to ensure that as many firms of builders as possible, with their men and plant, should be working for the authorities on all types of war damage. The licence would not permit any repair of war damage for private account which was above the general standard of repair being carried out by the local authority in their area at that time. That standard could be broadly illustrated as either the keeping out of the wind and the rain; or the repair of the minimum number of rooms required to ensure that the occupants might live in decency and a little comfort; or the completion, later, of the work required to make the entire home, or most of the home, habitable. Two other points. The licence would state clearly the time within which the work should be started. And, lastly, it would lay down the condition that no builder on private war damage repair work should charge, or receive, higher terms than those specified in the War Damage Commission's pamphlet ROD.1. There had been a black market in the building trade—payment "on the side" by private owners of sums above those allowed by the War Damage Commission as the proper cost of a job, and it had got to be stopped. It would not be wise to expect any very great alleviation from the requisitioning of large houses. The initiative in this matter and the power of requisitioning were with the local authorities, acting under the authority of the Minister of Health, and he did not think it was generally realised how widely they had already availed themselves of their powers. Something in the neighbourhood of three-quarters of a million homeless or inadequately housed people had been billeted or housed in requisitioned premises in the London Region since bombing first began. Sir MALCOLM stated with confidence to Londoners that there would be immediately a great advance in speed and effort to wage the battle to a successful finish.

A World Court.

MR. CHARLES L. NORDON, a well-known London solicitor, has sent us a copy of a pamphlet in which he outlines a draft Protocol providing the framework on which a world court may be founded. It is disappointing, he states, to find that the Informal Allied Committee on the future of the Permanent Court of International Justice propose, in its report of 10th February, 1944 (Cmd. 6531): (*a*) to retain the original and vague designation of "The Permanent Court of International Justice" (para. 6) with its seat at The Hague (para. 7); (*b*) jurisdiction should not be compulsory (paras. 57 and 58); and (*c*) jurisdiction should be confined to matters which are justiciable, excluding all cases which are political and require to be dealt with by "a political decision" (whatever that may mean) (para. 56). His comment is that a court whose jurisdiction can be refused is useless for the very type of case for which its establishment is vital. He adds: "In one sense no international dispute is strictly justiciable, for it cannot be decided by any system of law to which both parties are adherents. The committee no doubt have in mind to limit jurisdiction to the interpretation of treaties and conventions and to do so the judicial construction to be placed on the words used . . . A primary cause of the failure of the League of Nations to prevent war was that it became a college of advocates, without an umpire. A nation cannot be judge, as well as advocate, in its own cause." The jurisdiction of the Court, Mr. NORDON proposes, should extend to (*a*) claims by governments in relation to the territorial administration, or acts or omissions of other governments, and (*b*) complaints against the public acts, omissions or threats of individuals capable of endangering the lives, liberty or property of their own or other peoples. Each contracting government shall be entitled, according to the quotas set out in the schedule, provisionally to nominate members of the court and advisory assessors. Each member and advisory assessor would hold office for five years and thereafter be available for re-nomination. Without restricting the judicial powers of the court, its awards might take one or more of the following forms: (*a*) revision of territorial administrative boundaries; (*b*) direction that a plebiscite or referendum be held in any affected territory; (*c*) pecuniary compensation; and (*d*) decree of imprisonment or outlawry against specified individuals. Judgments (with reasons) would be published in the leading newspapers and by the broadcasting services of the principal countries and would be repeated at intervals of seven days until obeyed. It would be competent for the general assembly of the court to entertain and make provision for appeals. In the United States of America, as we recently noted in a "Current Topic," leading jurists have combined to formulate suggestions for the reinforcement of international law with a view to abolish war. This should now be the preoccupation of jurists in every country, for, as LORD CECIL said, in his address at the farewell party on 18th September to members of the London International Assembly who will soon return to their liberated countries: "The great work you have to do, each in your own country, is to create public opinion on the questions for settlement by the creation of organisations to spread proper ideas on the conditions for peace." In the work of helping to create public opinion on a vital condition of peace, Mr. NORDON has set an example.

Criminal Law and Practice.

Removal of Spirits.

ADVOCATES, especially in the lower courts, are accustomed to certain well-trodden legal paths, and gain their aptitude by the frequent recurrence of the same or similar points in their daily work. Entirely unfamiliar points do not often occur.

A solicitor who recently appeared for a defendant charged at Marlborough Street Police Court with an offence against the Spirits Act, 1880, had to confess that he, too, had rendered himself liable to prosecution, as when his house was bombed, he removed his stock of over six bottles of gin and six bottles of whisky to another house without obtaining a permit.

The summons, which was issued by the Commissioners of Customs and Excise, charged the defendant with the removal of twenty-four bottles of gin without a permit. The defendant had ordered the removal of the spirit to a wine dealer's premises in the West End because there had been a number of burglaries near his home. His object was to have the spirit near at hand when he wanted it. The Excise authorities seized the spirit after it had been moved.

The learned magistrate dismissed the summons under the Probation of Offenders Act on payment of seven guineas costs. Accepting the statement that the defendant had acted in ignorance of the law, he said that he was sure that a great many other people had acted in the same way.

The Spirits Act, 1880, is mainly concerned with the support of the national revenue. Provisions of the character of that on which this prosecution was based were no doubt designed so as to enable the Commissioners of Customs and Excise to keep track of all exciseable liquor. The breach complained of in this case seems to have been under s. 105 (7): "Except as in this section is provided, no spirits exceeding the quantity of one gallon of the same denomination at a time for the same person may be sent out, delivered, or removed from any one place to any other place, unless accompanied by a permit." Under subs. (8) spirits removed in contravention of the section "together with all horses, cattle, carriages and boats made use of in conveying the same" must be forfeited. Every person in whose possession the spirits are found "shall incur" a fine of £100 or at the election of the Commissioners, a fine equal to treble the value of the spirits.

It is of interest to note that s. 105 (1) to (6) consist of prohibitions affecting distillers, excise warehouses, customs warehouses, rectifiers, dealers and retailers. The need for a provision affecting all persons generally, such as that in subs. (7), thus becomes obviously that of preventing a traffic which would be hard to discover owing to the use of the names of persons who are not in the trade.

Another type of abuse which the provision may have been intended to cure is that revealed in *Toussaint* v. *Darbon* (1819), 1 Brod. & Bing. 5, in which a wine cooper had changed on the road wine which she had been hired to carry from one house to another, and it was held that the court would not presume that the wine was removed for the purpose of sale and therefore illegally removed under the excise laws.

Ample reason can therefore be seen for the provision, and the seriousness of the breach can be understood from the penalty imposed by s. 105 (8) as well as the additional fine of £500 imposed by s. 107.

There are many offences, among them more particularly such as are concerned with the licensing and revenue laws, in which proof of criminal intent is not essential to a conviction. They are offences *per se*, and ignorance of the law, however general, is no defence, and in some cases may be a circumstance of aggravation rather than of mitigation. The present case, however, was manifestly one where ignorance constituted a real mitigation of the offence.

"Quashing" a Conviction.

The bench at Stone petty sessions, Staffordshire, purported recently to convict a number of defendants on a charge of disorderly conduct, although the summonses were issued for hearing on a date during the following week (6th September). The result was, that on the occasion when the purported convictions were entered, none of the defendants were present, although letters of denial were read from two of the defendants.

At the hearing, which took place on 6th September, the two defendants who had written the letters, appeared and repeated their denials, and the father of one of them protested against her having been convicted without having had an opportunity of going into the witness box.

According to the report in *The Times* of 7th September, the court dismissed the summons against the two defendants who had denied the charge, and added: "There seems to have been a mistake over these cases being tried last week, for which we express regret." Two of the other three defendants appeared on 6th September, and pleaded guilty; and *The Times* stated: "The convictions in those three cases were allowed to stand." The first sentence of the report stated: "Convictions against (the two defendants) . . . were quashed at the same court yesterday."

What is the true legal effect of this fortunately unusual type of error? No one can be tried in his absence on a day which is not fixed for his trial and of which he is not notified. So much is elementary. "Paley on Summary Convictions," 9th ed. (1926), defines "conviction" as "a record, containing a memorial of the proceedings had under the authority of a penal statute before justices of the peace, or commissioners duly authorised to receive an information and proceed to judgment" (1 Salk. 377, Bosc. 7). How justices can be "duly authorised" to proceed to judgment on a day not fixed or notified to the accused, it is difficult to imagine. "Convictions," therefore, purporting to have been made on the first "hearing" could not "stand," because they could not have been convictions. All that the bench could do would therefore have been to hear the case as though nothing effective had previously happened, as indeed nothing had, and record its convictions. Such convictions properly recorded could not, it is submitted, be upset on the ground of *autrefois convict*, as the defendants would not have been in peril on the previous occasion of any effective conviction.

Finally, it is submitted that it is a misnomer to describe the procedure adopted as a "quashing" of convictions. If there were no convictions, there could be no quashing, and in any case a court of summary jurisdiction has jurisdiction to convict, but not to quash its convictions. That is a power reserved to courts of appellate jurisdiction.

General Words in Deeds.

THERE are not many conveyancers in practice now who remember the old conveyancing in use before the Conveyancing Act, 1881, came into force on the 1st January, 1882. People unkindly suggested that the large number of "general words" used was not unconnected with the fact that length of deed would often increase the cost of the deeds. Others more charitably might suggest that there was danger in omitting the mention of any item which conveyancers expected to see in the conveyance. The Conveyancing Act, 1881, was said to be "an Act for simplifying and improving the practice of conveyancing," and by providing that "a conveyance of land shall be deemed to include, and shall by virtue of this Act operate to convey," then follows a list of general words, the Act did simplify conveyances. The section cited above has been superseded by the Law of Property Act, 1925, s. 62. The second subsection refers to a conveyance of land with buildings on it which shall be deemed to include, etc. (*inter alia*), all "ways, passages, lights, watercourses, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land, houses or other buildings conveyed, or any of them or any part thereof, or at the time of conveyance demised, occupied or enjoyed with or reputed or known as part or parcel of or appurtenant to the land, houses or other buildings conveyed, or any of them or any part thereof." The list of advantages (to use a neutral word) passing could hardly be improved. Every advantage then used or enjoyed so as to make the land and buildings, enjoyed as they were being enjoyed at the time of conveyance seems to pass to the purchaser without being mentioned in the conveyance. It is part of the theory of our law that a vendor must not derogate from his grant by depriving the purchaser of advantages then enjoyed in regard to the property. If, therefore, a right or advantage of way, light or water is included in a lease or is even being enjoyed with the land or buildings, it *prima facie* passes under the conveyance. We say "right or advantage," because when the owner of the land or buildings also owns the land over which the way, light or watercourse is enjoyed, he does it by means of his ownership, being entitled to walk in the way or over any other part of his own property or use the light or water as he pleases.

As Bowen, L.J., said in *Bayley* v. *G.W.R. Co.*, 26 Ch. D. 434, at p. 452: "The rule about rights of way which arise from implication is simply this, that on a severance of two properties, anything like a right of way or any other easement which is used, and which is reasonably necessary for the reasonable and comfortable use of the part granted is intended to be granted too. The principle is that the grantor is assumed to have intended that his grant shall be effectual."

Clark v. *Barnes* [1929] 2 Ch. 368, is an interesting case on this subject. The evidence showed that neither the plaintiff nor the defendant intended that the right to use a certain track should pass by the conveyance. Lord (then Mr.) Justice Luxmoore is reported on p. 380 to have said: "The conveyance as executed does not exclude the operation of the section in question. It, therefore, operates to grant to the purchaser, as a legal incident, any privilege which was reputed to exist or which was in fact being enjoyed with the property conveyed at the time of the conveyance."

His lordship pointed out that at the actual date of the conveyance, there was in fact no use of the track, as the tenant who during the whole of his tenancy had used the track had previously given up his tenancy, but he held that a right to use the track was then reputed to be enjoyed with the land sold to the defendant. As it had been understood by the parties that there should be

no right of way, the conveyance was rectified by inserting a proviso expressly excluding the right of way.

It is to be observed that the conveyance was dated 8th October, 1926, and the judgment for rectification was not given until 30th May, 1929.

It is clear that a vendor's advisers should before contract see if there is any "advantage" which might pass under the conveyance, and if it is not intended that it should pass, insert in the contract or conditions of sale a proviso that the assurance is not to include the advantage in question (see "Key and Elphinstone's Precedents," 14th ed., vol. 1, p. 580). But a purchaser must not go to the other extreme, and because the vendor as owner of Whiteacre and Blackacre could have gone over any part of Blackacre in order to reach Whiteacre, the purchaser of Whiteacre must not expect to have the same right of going over any part of Blackacre. "For this purpose," said Sargant, J., as he then was, in *Long* v. *Gowlett* [1923] 2 Ch. 177, "it would seem that there must be some diversity of ownership or occupation of the two closes sufficient to refer the act or acts relied on not to mere occupying ownership, but to some advantage or privilege (however far short of a legal right) attaching to the owner or occupier of Whiteacre as such and *de facto* exercised over Blackacre" (p. 201). Later in his judgment that learned judge said: "The fact that the common owner and occupier sells two adjoining closes separately is, in my mind, a negation of the intention to preserve access between them . . . The only two exceptions to this rule appear to be those of ways of necessity and of continuous and apparent easements."

In *Gregg* v. *Richards* [1926] Ch. 521, the Court of Appeal held that the fact that there was a way of a certain nature expressly granted did not exclude the statutory general words. Indeed, Sargant, L.J., said on p. 534: "I think it is important to point out that because the words are in the statute and do not appear in the conveyance they must not be looked upon as mere implied words or anything of the sort."

It is expressly enacted by the Land Registration Act, 1925, s. 19 (3), that "the general words implied in conveyances under the Law of Property Act, 1925, shall apply, so far as applicable thereto, to dispositions of a registered estate." See also *ibid.*, s. 20.

Books Received.

Mental Abnormality and Crime. Introductory Essays by R. N. CRAIG, W. N. EAST, R. D. GILLESPIE, E. GLOVER, D. K. HENDERSON, E. O. LEWIS, D. R. MACCALMAN, A. MACNIVEN, E. MILLER, J. D. W. PEARCE, J. R. REES, G. DE M. RUDOLF, G. M. SCOTT. Preface by Prof. P. H. WINFIELD, K.C., LL.D. 1944. pp. xxiv and (with Index) 316. London: Macmillan & Co., Ltd. 18s. net.

The Modern Prison System of India. By Lieut.-Col. F. A. BARKER, C.I.E., O.B.E., etc. Foreword by LORD HAILEY. Preface by Prof. P. H. WINFIELD, K.C., LL.D. 1944. pp. xvi and (with Index) 139. London: Macmillan & Co., Ltd. 10s. 6d. net.

Nectar in a Nutshell. An Anthology of Wit and Wisdom distilled by C. KENT WRIGHT. 1944. pp. 112. London: George Allen & Unwin, Ltd. 2s. 6d. net.

Stone's Justices' Manual for 1944. Seventy-sixth Edition. Edited by E. J. HAYWARD, O.B.E., Solicitor, Clerk to the Justices for the City of Cardiff. pp. cccxxxii, 2938 and (Index) 189. London: Butterworth & Co. (Publishers), Ltd. 50s. net medium edition; 55s. net thin edition.

The Conveyancers' Year Book 1944. By Sir LANCELOT H. ELPHINSTONE, of Lincoln's Inn, Barrister-at-Law. Vol. 5. pp. xliv and (with Index) 288. London: The Solicitors' Law Stationery Society, Ltd. 25s. net.

Protection against Group Defamation. Study prepared by P. WEIS, Dr. Jur. in collaboration with the Legal Research Committee of the British Section of the World Jewish Congress. Preface by F. R. BIENENFELD, Dr. Jur. 1944. pp. 40. London: World Jewish Congress. 2s. net.

Burke's Loose-leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1943–44 volume. Parts 9, 10 and 11. London: Hamish Hamilton (Law Books), Ltd.

Tax Cases. Vol. XXV. Part V. London: H.M.S.O. 1s. net.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XXVI. Parts I and II. Edited by F. M. GOADBY, D.C.L. London: Society of Comparative Legislation.

The Conveyancer and Property Lawyer. Edited by DONALD C. L. CREE, M.A., of Lincoln's Inn, Barrister-at-Law, and HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law. Volume 8 (New Series). 1944. pp. viii and (with Index) 346. London: Sweet & Maxwell, Ltd. £1 12s. 6d. net.

The Judicial Committee of the Privy Council begins its Michaelmas sittings on Tuesday, 17th October, with a list of twenty-eight appeals, of which three are from Canada, two from Ceylon, seventeen from India, one each from Cyprus, West Africa, East Africa, Palestine, and Jamaica, and one is a Prize Appeal. Seven judgments await delivery.

Landlord and Tenant Notebook.

Address for Service of Notices.

I UNDERSTAND that in the course of a recent proceeding under the Landlord and Tenant (War Damage) Acts, not or not yet reported, a question arose about the meaning of the word "serve" in the expression "the tenant may serve on the landlord," in s. 4 (1) of the 1939 Act, which provides for disclaimer or retention of unfit premises. I do not know the exact facts, but gather that there was some dispute about when a notice of disclaimer had taken the effect provided for by s. 4 (2) "As from the date when the notice of disclaimer was served (*a*) the lease disclaimed shall be deemed to have been surrendered," etc.

The Acts make no special provision for service. A notice served at the landlord's last-known place of abode in the United Kingdom will apparently be ineffective if the landlord is not there, and this applies, *mutatis mutandis*, to notices to be served on tenants.

Before, however, blaming Parliamentary draftsmen in the usual manner for this oversight, it is perhaps as well to remember that draftsmen in general have been slow to appreciate the importance of inserting some clause modifying the strict necessity for personal service in ordinary leases under which notices may be important.

In *Seward* v. *Drew* (1898), 67 L.J.Q.B. 322, a proviso by which the tenant could determine a twenty-one-year lease at the seventh or fourteenth year did, it so happens, contemplate the difficulty; "and shall of such his or their desire or intention give notice in writing to the said H, his heirs or assigns, or shall leave the same at his or their usual or last known place of abode in England six calendar months before the expiration of," etc. It so happens that the alternative method did not avail the parties concerned in the case, who were grantee and first assignee of the term; a later assignee had disappeared, and the clause, comprehensive as it was, did not enable them to give the desired notice; but the case sufficiently illustrates what I have in mind.

Though it is usually the tenant who suffers through the absence of such a clause, a very brief statement of the position may be found in the judgment of Brett, M.R., in *Hogg* v. *Brooks* (1885), 15 Q.B.D. 256 (C.A.), in which the landlords had reason to regret its absence. They let a shop to one, C, for twenty-one years, the lease giving them a right to determine at the fourteenth year "by delivering to the tenant, his executors, administrators or assigns," etc. C mortgaged the premises by way of sub-demise; his mortgagee took possession and sub-let to the defendant. The plaintiffs sent notices to C, the mortgagee, and the defendant. L could not be shown to have received his. "The parties to this lease," said Brett, M.R., "have stipulated that if one thing be done the landlord may put an end to it, and in my opinion the court must construe that clause according to the ordinary meaning of the English language . . . Here there was no assign of the tenant . . . and the only person on whom the notice could be served in order to fulfil the terms of the proviso was the tenant, C, himself . . . "

Brett, M.R., refrained from expressing sympathy with the plaintiffs, and normally a landlord whose tenant disappears is less prejudiced thereby than is a tenant who cannot find his landlord. In this connection it may be pertinent to observe that a landlord may be on the scene when rent is due, but may not be available when the tenant wishes to serve some notice on him. And an agent authorised to receive rent may have no authority to accept notices. The landlord, if the tenant abandons the premises, will usually be able to re-enter by virtue of a forfeiture clause if rent be not paid or if other obligations of the tenancy be not observed; failing this, he will generally be able to recover possession by proceedings under the Deserted Tenements Act, 1817. And, as to how far he may go in dealing with the premises without accepting a surrender, see *Oastler* v. *Henderson* (1877), 2 Q.B.D. 575 (C.A.). But omission to serve the landlord with notice under a power to determine may mean a "hard case," as Romer, J., described the position in *Easton* v. *Penny* (1892), 67 L.T. 290.

Of course, it is not only notices to determine under an option that the tenant may wish to serve. The now well-established rule that a landlord who covenants to repair (or is deemed by virtue of the Housing Act, 1836, to have so covenanted) is not liable until he has received notice of the want of repair, makes the insertion of an address-for-service clause advisable. In the case of the numerous notices provided for by the Agricultural Holdings Act, 1923, the statute itself (as it did its predecessors) has come to the aid of the parties: by s. 53 any notice, request, demand, or other instrument, etc., may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there. Of course, this applies to both parties, but is more likely to assist tenants than landlords. This does, perhaps, make it remarkable that those who framed the Landlord and Tenant (War Damage) Acts did not make similar provision; for the very emergency which occasioned those statutes has resulted in many landlords being not only abroad, but also in being prevented from disclosing

their addresses; and as to tenants, the very events with which the legislation is concerned occasions changes of abode.

Whether an ordinary address-for-service clause inserted in a lease made before 1939 would cover notices under these Acts is perhaps arguable. But all I want to suggest to those concerned in drafting and advising on draft leases is that the time has now come to make such a clause a normal feature of such instruments. I know that this may add to the difficulties of those advising intending tenants, who are usually over-complacent and do not like to be warned of merely potential dangers: Cassandra was not a popular lady, and if Troy had had the equivalent of Defence Regulation 39BA would doubtless have been convicted of publishing reports or statements relating to matters connected with the war likely to cause alarm or despondency. But I trust that what I have mentioned in this article will enable practitioners to advise clients to insist on address-for-service clauses.

To-day and Yesterday.

LEGAL CALENDAR.

October 9.—In 1725, young Mr. John Bowes went to Ireland as secretary to Lord Chancellor West. On the 9th October, four weeks after his arrival in Dublin, he wrote an amusing account of his first impressions: "When I tell you the people here are French in all respects but their language, you will admit I ought not to depend upon general civilities . . . I am, indeed, retained in upwards of twenty causes, the fees of which I have placed on the debtor side of my account with the Chancellor, for I consider them as compliments paid to him, and as to myself hope they will prove the means of showing me in business. Though I cannot appear in business till I am called to this bar, yet I constantly attend the seals, which are here opened every Thursday during the vacation, at which time the Chancellor answers petition in public and in that manner dispatches the ordinary motion business of the court (a method introduced for the benefit of the secretary). However, counsel are feed in all matters of consequence, by which means I have already heard most of their great men, who I can assure you, excepting one or two, would not appear so in England." He himself became Lord Chancellor of Ireland in 1757 and was raised to the peerage as Lord Clonlyon.

October 10.—On the 10th October, 1591, the Inner Temple benchers ordered: "Mr. Crowther fined £5 for not giving his attendance as steward of the reader's dinner at the last summer reading. And if he shall not before the feast of All Saints, pay all sums of money as were laid out in his absence, it shall be considered of at the next parliament."

October 11.—On the 11th October, 1601, the Inner Temple benchers ordered "that Mr. Robert Pye, being an utter barrister of this Society, shall from henceforth be and remain disgraded from the degree and place at the bar, and be also expulsed and put out of this House and fellowship of the same for a most foul and treacherous practice of his, in the wrongful and malicious persecuting against Christopher Merricke, gent., one also of the utter barristers of this House, to the endangering of the life and loss of lands and goods of the said Mr. Merricke." What had happened was this. In February Pye had borrowed £3 from Merricke for a week. By July he had not repaid it, but under threat of arrest for the debt he tendered 56s., alleging that Merricke owed him 4s. for a bet that an infant attains full age when he enters on his twenty-first year and not only when he has accomplished the twenty-one years fully, days and hours. A fight followed the dispute, and Merricke by violence took the 56s. from Pye and his inkhorn too. Pye thereupon indicted Merricke at Newgate and gave evidence before the grand jury that he had been robbed by him on the Queen's highway. Despite the remonstrances of the Recorder, Mr. John Croke, a bencher of the Inner Temple, he insisted on pursuing the prosecution. Merricke was acquitted and Pye was expelled from the Inn, found guilty in the Star Chamber of perjury and intended murder and condemned to be twice pilloried, to lose his ears, to be fined 1,000 marks and to suffer perpetual imprisonment. However, he recovered his credit and survived to become auditor of the Exchequer, a knight and a member of Parliament.

October 12.—On the 12th October, 1779, Mr. Serjeant Adair was elected Recorder of London by a majority of one vote in the Court of Aldermen. He retained the office for ten years. He had no brilliance and little polish, but he was a good lawyer and had sound ability. He died in 1798 quite suddenly just after a shooting exercise which he had attended as one of the volunteers mustered to form a citizen army ready to meet the threatened French invasion.

October 13.—On the 13th October, 1915, a German bomb falling in Lincoln's Inn just missed the chapel, spattering the stonework with splinters and doing great damage to the windows. In a subsequent air-raid another bomb fell in the square formed by Stone Buildings, the houses of which still bear the marks of the explosion.

October 14.—Charles Neaves, whose father was for many years Clerk of the High Court of Justiciary, was born in Edinburgh on the 14th October, 1800. He entered the Faculty of Advocates in 1822, was appointed one of Sir William Rae's advocates-depute in 1841, became Sheriff of Orkney and Shetland in 1845, obtained the office of Solicitor-General in 1852, became a judge of the Court of Session in the following year, with the title of Lord Neaves, and finally in 1858 took his place as a Lord of Justiciary. He was a classical scholar, a man of letters and a wit, and while at the bar he enlivened the circuit dinners as "an excellent compounder of humorous songs." His "Latin reiepe for framing an indictment for the use of Advocates Depute" is still remembered:

"Quando, ubi, quo pacto, quis, quid patraverit, in quem
Recte compositus quisque libellus habet."

And his own translation runs:

"A good indictment, if you follow Hume,
Shows when, where, how, who did what wrong, to whom."

(Hume was the great Scottish authority on criminal law.) Excellent, too, was his description of Sir Wilfrid Lawson's Permissive Bill:

"A simple little Bill that seeks to pass incog.
To *permit* me to *prevent* you from having a glass of grog."

He died in 1876 and his little book on "The Greek Anthology," as well as his "Songs and Verses, Social and Scientific," were long widely appreciated.

October 15.—At the Old Bailey Sessions on the 15th October, 1736, "three criminals received sentence of death, viz., William Rine and Samuel Morgan, for the highway, and Mary Campton for stealing goods; one was burnt in the hand, twelve ordered for transportation and twelve acquitted."

RIOTS IN COURT.

The photographs published in the Press of the disorderly scenes in the Court of Justice in Rome, when the trial of Caruso, the Fascist chief of police, was due to begin, illustrate an incident which has had few parallels in English courts. However, something very like it occurred during the trial of Arthur O'Connor at Maidstone in 1798 on a charge of high treason. In the course of the proceedings an abortive attempt was made to rescue him. He leapt over the bar of the court and made for the door. There was a general riot and confusion; fists and sticks were raised; men jumped on the table; some of the candles were thrown down. At one moment someone stood on a table with a drawn sabre to prevent anyone advancing towards the judges. The Earl of Thanet, a friend of O'Connor, and several other persons were subsequently tried for their part in the riot. In 1869, at Marlborough Street Police Court there was an even fiercer conflict. The case arose out of the horse-whipping of the editor of a sensational journal for some scandalously libellous articles on Lord Carrington. In the course of the hearing a dispute arose as to the possession of some documents and just after an adjournment had been announced a fight began to rage around them Noble lords, Queen's Counsel, solicitors, witnesses to the number of about thirty struggled together. Hats were broken, eyes blackened, inkstands hurled, while the magistrate looked on in horror. At last the police cleared the court. Sir Hardinge Giffard, afterwards Lord Halsbury, was in the thick of it all, using his fists vigorously.

Our County Court Letter.

Transfer of Burden to Landlord.

IN *Winchester Court, Ltd.* v. *Miller*, at West London County Court, the claim was for £20 as arrears of rent and a declaration that the plaintiffs were entitled to increase the rent by £20 or some other sum representing the transfer to the landlord of a burden previously borne by the tenant. An alternative claim was for a declaration that the tenant was liable to perform the covenants contained in a lease to her predecessor in title. In 1936 the house had been let to the defendant's predecessor in title on a seven years' lease at an annual rent of £195. The lessee had covenanted to do all internal repairs. This lease terminated in 1941, when the house was let to the defendant on a quarterly tenancy at a yearly rent of £160. The defendant, however, undertook to do the internal repairs to a less extent than that provided for in the covenant in the original lease, as the defendant's undertaking contained an exception of fair wear and tear. In 1942 there was substituted a similar tenancy agreement, except that the rent then became £165 a year. In November, 1942, the rent was raised by a statutory notice to the standard rent of £195 as from the 25th February, 1943. The contractual tenancy was terminated on the 15th November, 1943, under a notice to quit dated the 11th August, 1943. A notice was served on the 31st August, 1943, that as from 15th November, 1943, the rent would be the standard rent of £195 plus £1 10s. 8d. the permitted increase for rates, and £20, being the cost of repairs for which the former tenant was liable. The latter item was claimed under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 2 (3). The plaintiffs' case was that the exception of fair wear and tear had resulted in a transfer to the plaintiffs of part of the burden of repairs which had been carried by the defendant's predecessor in title. The defendant denied liability for the £20, and it was held that the above

subsection only applied to the transfer to the landlord of a burden from the tenant who bore that burden immediately before the increase of rent. Judgment was accordingly given for the defendant, but this has since been overruled by the Court of Appeal (Scott and MacKinnon, L.JJ., Luxmoore, L.J., dissenting). The above subsection did not bear the limited interpretation adopted by the county court judge, as the increase of rent referred to included any increase, above the standard rent, as the result of transfer to the landlord of a burden previously borne by the tenant. The latter expression included a tenant under a demise fixing the standard rent. The appeal was therefore allowed. See [1944] W.N. 183.

Conversion of Perambulator.

In *Quartermain* v. *Quartermain and Abrams* at Wellingborough County Court, the claim was for £30 as damages for the conversion of a perambulator. The action was brought originally by the plaintiff against the second defendant, who was his mother-in-law. An adjournment was granted, however, to enable his wife to be joined as co-defendant. The plaintiff's case was that he and his wife had had a separation, and she had taken the perambulator with her for the use of the baby. The defendants had subsequently sold the perambulator without the authority of the plaintiff. The case for the defendants was that the perambulator had been bought out of money given to the first defendant by the plaintiff, to enable her to buy clothes. She therefore considered that she had the right to dispose of the perambulator. His Honour Judge Galbraith, K.C., gave judgment for the plaintiff for the amount claimed with costs. It is to be noted that the above circumstances constituted an exception to the rule that a husband and wife are unable to sue each other in tort.

Landlord's Right to Possession.

In *Virgin* v. *Mannister* at Banbury County Court, the claim was for possession of a cottage at Hook Norton, and for £7 11s. 5d. mesne profits. The plaintiff was a school teacher, and her case was that she was living in lodgings and was engaged to a farmer. Her fiancé was living in a caravan, and the date of the marriage depended upon whether the plaintiff could obtain possession of the cottage. Alternative accommodation had been offered at Wiggington, at a reduced rent, but the defendant would not accept this. The defendant's case was that the house at Wiggington was smaller, e.g., it had no box room, and the garden was smaller than that of the cottage at Hook Norton. Moreover, the house at Wiggington was too far from the bus route. His Honour Judge Forbes made an order for possession in twenty-one days, and gave judgment for the plaintiff for the amount claimed, with costs on the lower scale.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 22, Chancery Lane, W.C.2 and contain the name and address of the subscriber, and a stamped addressed envelope.

Will—Gift to a Class on attaining Twenty-one after a Prior Life Interest—Vesting.

Q. A testator who died in 1901 left his real and personal estate by his will upon trust for sale and conversion and investment of the proceeds of sale. His trustees were to pay the income from the investments to the testator's daughter (died 1943) during her life, "And after her decease in trust for all the children of (the testator's daughter) who being sons shall attain the age of twenty-one years or being daughters shall attain that age or marry in equal shares and if there shall be only one such child the whole to be in trust for that one child." The testator's daughter had seven children, three of whom predeceased her in infancy. Three survived her, having attained the age of twenty-one years. And the fourth died in 1904 aged twenty-two intestate and leaving a widow but no children. Please confirm that the son who died in 1904 had a vested interest, and that the estate should now be divided into four parts, one of which can only be paid to the personal representatives of the son who died in 1904. The surviving three children contend that the estate should be divisible among them, and that the son who died in 1904 was not entitled to any share.

A. We see nothing to support the contention of the surviving three children, and accordingly confirm that the deceased son, who died in 1904, attained a vested interest when he attained the age of twenty-one years, and that his personal representatives take a quarter.

Private Company.

Q. (1) A private company is formed under the Companies Act of 1908 adopting cl. 76 of Table A in regard to the seal. The articles of association provide that unless and until otherwise determined by the company in general meeting the number of directors shall not be less than two nor more than five. There were only two members of the company, namely, A and B, both of whom were directors, A being also secretary. By resolution of the directors it was resolved that the seal of the company should be affixed in the presence of one director only, and for some time past documents requiring the company's seal have been sealed by A only and also signed by him as secretary. The general effect seems to be that the directors' resolution has varied the company's articles of association adopting cl. 76. Is this permissible?

(2) It is presumed that the company is still governed by Table A of the 1908 Act and that cl. 76 of Table A has not been superseded by cl. 71 of Table A of the 1929 Act. Is this correct?

(3) B has recently sold the whole of his shares to A and A now holds all the shares in the company. Is it possible for the company's seal to be affixed in his presence only and for him also to sign as secretary, or must he in the first instance under cl. 84 of Table A of the 1908 Act appoint an additional director? He does not wish to do this as the share qualification of a director is the holding of 500 shares.

A. (1) The directors cannot vary the provisions of the company's articles of association. Documents to which the seal has been affixed and which are signed by A only have not, therefore, been properly executed.

(2) Yes.

(3) As A is now the only shareholder in the company, the number of members has fallen below the statutory minimum of two. Reference should be made to ss. 28 and 168 (4) of the 1929 Act.

To regularise the position, it is suggested that one share should be transferred to some appropriate person. A general meeting should then be called, and A and the new shareholder, being the only members, should pass a special resolution adopting a new article as to the affixing of the seal to the exclusion of cl. 76 of Table A, altering the article which provides for the minimum of two directors, and making any other change thought necessary. If the new shareholder is to be appointed a director, the article which states the share qualification of a director could also be altered. If not, a secretary should be appointed, who will then be able to witness the sealing in addition to the single director. An examination of the articles may indicate that other alterations are necessary or desirable.

Requisitioned Sunday School.

Q. A Congregational Sunday school was requisitioned by the R.A.F. in September, 1941, and the rent was fixed by the R.A.F. at £250 per annum, and this rent has been paid quarterly. Recently the collector of taxes has presented three demands for Sched. A tax at 10s. in the £, based upon this rent for the three years ending 5th April, 1942, 5th April, 1943, and 5th April, 1944, amounting in all to over £300, and has requested payment on demand. We believe that this Sunday school is legally a charity and should be exempt from rates and taxes, and we think that the fact that the collector has not presented his demands year by year suggests that he is not quite sure of his position. We also understand that no other school which has been similarly requisitioned has, in this county at any rate, been asked to pay any Sched. A tax. Is there any legality for the claim?

A. The case is distinguishable on the facts from *Mellows* v. *Buxton Palace Hotel, Ltd.* (1943), 60 T.L.R. 105. The building is not let for profit. The payments from the R.A.F. are compensation for deprivation of use as a Sunday school, i.e., not "rent" under a tenancy. The claim is therefore invalid.

Obituary.

Prof. A. B. KEITH.

Professor Arthur Berriedale Keith, D.C.L., D.Litt., holder of the Chair of Sanskrit and Comparative Philology, and lecturer on the Constitution of the British Empire in the University of Edinburgh, died on Friday, 6th October, aged sixty-five. He was educated at the Royal High School at Edinburgh and at Edinburgh University. In 1904 he was called by the Inner Temple, and in 1921 he was admitted to the Faculty of Advocates, Scotland. He was the author of numerous works, including "Constitutional History of the British Empire" (1930), which was awarded the Royal Empire Society's gold medal. He also edited and prepared in collaboration with other learned writers several legal text-books. Among them were the treatise on the Conflict of Laws, which he produced in its third edition in 1922 with Prof. A. V. Dicey, and the fourth edition of Anson's "Law and Custom of the Crown."

Dr. W. A. BREND.

Dr. William Alfred Brend, M.D., medico-legal expert, died on Thursday, 5th October, aged seventy-one. He was called by the Inner Temple in 1905. In 1902 he qualified M.R.C.S., L.R.C.P., becoming M.B., Lond., with honours in 1903, and M.D. in 1915. He had been a vice-president of the Medico-Legal Society.

Wills and Bequests.

Mr. Walter James Lark, solicitor, of Highgate, left £1,823, with net personalty £1,773.

Sir G. Godfrey Warr, solicitor, former Alderman and Sheriff of City of London, left £17,166, with net personalty £7,420.

Legal Advice and Legal Aid for Poor Persons.

SOME months ago the Haldane Society initiated an inquiry amongst its members on the best method of enabling persons of limited means but outside the definition of "poor persons" (who are at present deprived of access to the courts) to obtain justice in both civil and criminal matters. In the meantime the Government has set up the Rushcliffe Committee to deliberate on this subject. The executive committee of the Haldane Society, which had already completed the outlines of a scheme to provide legal aid for the poor, called a meeting, which took place on Saturday, 30th September, 1944, in the Lord Chief Justice's Court. This meeting was attended by over 200 persons, including not only members of both branches of the profession, but also justices' clerks, delegates from the Bentham Committee, many poor man's lawyers organisations from all parts of the country, the Howard League for penal reform, delegates from Labour Party branches, and the Council of Social Service.

The scheme proposed by the executive of the Haldane Society after some slight alterations, was passed unanimously by those present, who represented over fifty different organisations, both lay and legal. The Haldane Society proposals are set out hereunder.

THE HALDANE SOCIETY'S PROPOSALS.

1. *The proposed scheme in general outline.*—The scheme is based on the view that Citizens' Advice Bureaux should be perpetuated, and at the same time put under more standard organisation, and that they should also be developed; and that the principles of the present system of legal aid in criminal matters should be extended to all branches of the law.

The following scheme is suggested:—

(1) Existing Civilian Advice Bureaux should be continued, and new ones set up if and where necessary.

(2) The country should be divided up into convenient areas for the administration of the whole scheme of legal advice and aid. Present county court districts would be suitable areas in a number of ways. They would probably prove to be about the right size; the existing machinery of the county courts would, as hereinafter appears, greatly ease the task of organising legal aid.

(3) Every district would be administered by a district committee, with a paid clerk. It would be found that in some districts this would be a whole-time office, but in many it would probably be a part-time one which could easily be combined with the duties of such persons as the assistant registrar of the county court.

(4) A district committee would be so composed as to avoid an atmosphere of bureaucracy, and to ensure a reasonable measure of democratic control. It is suggested that such a committee should consist as to one-third of its members of representatives of the two branches of the legal profession.

As to another third, the personnel of the committee should consist of persons appointed by the local authority and perhaps including nominees of the Lord Chancellor.

As to the remaining third, it should consist wholly of representatives of the "consumers" of legal aid, that is, persons democratically appointed by local organisations such as trades councils, and including representatives of the local Council of Social Service.

(5) If the scheme is to be run in terms of county court districts, and if Citizens' Advice Bureaux are to be as well spread over the country as they are now, there are likely to be several Citizens' Advice Bureaux in each district. It is suggested that each Citizens' Advice Bureau be administered by a local sub-committee of the district committee. This should not necessarily consist of persons already members of the district committee, because the whole point of such sub-committees would be to preserve a local atmosphere about the Citizens' Advice Bureau.

(6) All district committees should be subject to the direction of, and answerable to, a national committee, of which the Lord Chancellor should be chairman.

In appointing the Lord Chancellor as chairman, someone would be answerable for the working of the scheme in Parliament. The Lord Chancellor should have an under-secretary, who would be answerable for these matters in the House of Commons.

(7) The national committee should have a staff of whole-time paid clerks, or a clerk and some assistant clerks, who would be able to travel round the country to secure the proper and even administration of the scheme.

(8) It is suggested that a social case worker should be available to every legal aid bureau.

2. *How the scheme would work.*

(1) The Citizens' Advice Bureaux would carry out their functions much as they do at present, namely, giving miscellaneous information and advice. They are not now, and should not in the future, be expected to give substantial legal advice. Any query which the personnel of the Citizens' Advice Bureau felt to be beyond them (and they would be instructed to impose somewhat unambitious limits on their activities) would be referred *either* to the legal aid bureau for the district—which would, as already indicated, generally be in the building of the county court—*or* to a local solicitor, one of a rota.

The Haldane Society favours the general rule that matters sent on from a Citizens' Advice Bureau should be sent to the legal aid bureau. But one can imagine many districts, particularly the remoter country districts, in which it would be more practicable and convenient from every point of view to refer cases to a solicitor. This method of dealing with a case might also tend towards establishing a close personal touch—often very necessary. Another alternative could be the opening of the legal aid bureau otherwise than every day. Indeed, there may well be many districts in which it might be more convenient only to have the legal aid bureau open once or twice a week, or perhaps only when the county court or police court are sitting. One of the virtues of these proposals is their flexibility. Arrangements of the kind here postulated would clearly be matters for the decision of district committees, and whatever a district committee might try in the beginning, it might find by experiment that some other arrangement worked better.

(2) A legal aid bureau would be entitled—

(*a*) to give any legal advice on any matter;

(*b*) to refer any matter for advice to any solicitor or to take counsel's opinion thereon;

(*c*) to grant to any applicant a certificate, hereinafter called a "legal aid certificate," entitling him to the services of a solicitor, or counsel, or solicitor and counsel, as the bureau think fit, in any litigation threatened, advised or pending, either free or upon such terms as the bureau think fit. Provided that the bureau might refuse to give any advice or to grant a certificate on any terms to any person who appeared to them to be well able to afford to pay for advice or representation himself.

To meet the case of a party who has already instructed a solicitor, but finds that he cannot afford to go on, we suggest that a solicitor should be entitled to apply for a certificate on behalf of his client.

(3) The Society is not in favour of imposing any income limit in connection with the giving of advice and assistance. It prefers to make it discretionary in the legal aid bureau to give free advice and aid, or to charge such fee as they think fit.

In making up its mind as to whether to give an applicant free service or to charge him a fee, it is suggested that the bureau should not be entitled to apply a strict means test, but should be entitled to make reasonable inquiries sufficient to enable it to form some opinion as to the applicant's means.

(4) A refusal to give advice or to grant a legal aid certificate, or consent to give advice or grant a certificate only upon terms, should be appealable, in the case of a civil matter, to the county court registrar, and in the case of a criminal matter, to some other person or body.

(5) It is suggested that the functions of the legal aid bureau should be allowed to include the writing of letters in its own name. It is thought, however, that after the commencement of proceedings in any action, prosecution, cause or matter, legal aid bureau should pass the applicant on to a solicitor, and should not conduct either negotiations or interlocutory proceedings in its own name.

(6) It would sometimes happen that a court would find before it some person—usually, no doubt, a defendant—who had not troubled to go to a legal aid bureau to get a legal aid certificate, and who would therefore be unrepresented at the trial. To meet this difficulty, it is suggested that the court should be obliged to ask any person so appearing before it whether he had applied for a legal aid certificate to any certificate-granting authority, and if the answer were in the negative, that court should invite him to apply then and there. It is suggested that any such application should be made to the clerk to justices, the registrar of a county court, the associate of an assize court sitting in its civil capacity, a master of the High Court in London, the clerk of the peace or the clerk of assize, as the case might be, and that an appeal should lie from the decision of any such authority to the justices or judge, as the case might be.

It is not suggested that such an application to a court should necessarily wait until the case is called on, and the party questioned as postulated above; it should be open to a party arriving at a court and realising his predicament to make the appropriate application at the earliest opportunity. It would probably be convenient to have a notice about the granting of certificates prominently displayed in the precincts of every court.

(7) Every legal aid bureau would keep a roll of solicitors and counsel willing to undertake work under the legal aid scheme.

(8) A solicitor acting for a person who has been granted a legal aid certificate would be entitled to recover his costs from an unsuccessful opposing party, in full, on the ordinary scale; but should he be unable to recover such costs, he would be entitled to recover from the local legal aid committee such sum as together with the costs, if any, recovered from the opposing party, would be equal to two-thirds of his taxed costs.

(9) In the case of a party with a legal aid certificate being unsuccessful against an ordinary, non-assisted, litigant, the successful party would be able to recover his taxed costs from the legal aid committee which had granted a certificate to his opponent.

(10) In the case of litigation in which both parties had legal aid certificates, costs would not be payable by either party, and would be a bookkeeping matter for the legal aid committee or committees concerned.

(11) A legal advice bureau or such other authority as would be entitled to grant certificates, should be entitled, in its discretion, to demand from a person applying for a certificate not only a fee, but also a deposit on account of probable costs.

(12) Counsel's fees.—It was recommended that a scale should be prescribed for counsel's fees, which in the county court should allow for fees equal to those allowed on the lower scale and Scale A, and to two-thirds of those allowed on Scales B and C. For cases in courts of summary jurisdiction, a discretionary scale should be fixed, so that for a simple and short case, a minimum of £1 3s. 6d. should be allowed, and it should be left to the discretion of the clerk to the justices to allow and increase above that in a substantial case.

In the High Court and Court of Appeal, it should be in the discretion of a taxing master to fix a fee which, in his opinion, would be equal to two-thirds of the fee which a rank and file counsel would have been paid by an ordinary client.

(13) To ensure that the benefits of the scheme be fully enjoyed, it is recommended that every person served with any process instituting any action, cause or matter should be served with a notice stating in simple

anguage his rights as to applying for legal aid, in the same way that notices under the Courts (Emergency Powers) Acts are served at the present time.

(14) The Haldane Society is of the opinion that the present system of legal aid in criminal matters is excellent in principle; the criticisms in connection with it are (i) that it is not widely enough used, and (ii) that the maximum of the fees allowed to both solicitors and counsel should be increased. If the maximum were increased, it could be most satisfactorily left to clerks to justices, clerks of the peace, and clerks of assize to use their discretion in fixing the actual fees paid in any case.

(15) The question of whether costs in poor prisoners' cases should continue to be paid out of county funds, or whether they should be paid out of the same national fund, by the Treasury, as would the expenses incidental to the rest of the legal aid scheme we have proposed, is more of a matter for such persons as county treasurers to give an opinion on, but the Society inclines to the view that for the sake of uniformity these costs in criminal cases should be paid from the same fund as those in civil cases.

(16) In view of what has been said, little amendment would be required n the Poor Prisoners' Defence Act. It would, however, be necessary to provide for the granting of certificates by legal advice bureaux as well as by the authorities presently entitled to grant them.

(17) As to the criticism that the present system is not sufficiently widely known and used, it was suggested that this point would be adequately covered by causing every person summoned or charged to be served with a notice in a prescribed form stating in simple language what rights he has as to applying for legal aid.

(18) In considering whether it be in the interests of justice that a certificate should be granted, attention should not be limited to consideration merely as to whether any substantial point of law or of fact is involved; t should be considered whether it seems likely that there is anything which might be said about the accused which he seems unlikely to be able to say for himself, and to assist their deliberations on this question to consult, f they feel it desirable, the probation officer.

It would, it is suggested, be necessary to put these considerations into statutory form (which would only require one section of an Act dealing with the whole subject of legal aid). The carrying of such a provision into effect would be facilitated by the Lord Chancellor issuing an explanatory circular to magistrates, and also to the higher judiciary.

(19) The abolition of the dock brief is recommended.

(20) The cost of the scheme appears to fall into two main parts—(i) the cost of providing the Citizens' Advice Bureaux, legal aid bureaux, and the committees and their clerks; (ii) the costs of litigation, consisting both of the cost of financing persons with legal aid certificates in their litigation, paying solicitors and counsel, and also the costs paid to non-assisted parties who are successful in an action with an assisted party.

As to (i), this would be comparatively slight The State already pays or the maintenance of Citizens' Advice Bureaux, and it already pays a good part of what would be the cost of the legal aid bureaux. That is to say, these bureaux would, where possible, be in county court offices. In many cases, the personnel are already there too—in so far as part-time or occasional legal aid bureaux are concerned, which could, we suggest, be run by existing county court personnel. In so far as some of the bureaux would require to have full-time advisers, their salaries would be a new expense, but taken over the country as a whole, we say it would not be a heavy one.

Similarly, the clerks to district committees would in many cases be part-time officials, and in many cases it might prove convenient to combine the office of clerk to the district committee with that of adviser in the egal aid bureau.

In addition, there would be the salaries of the clerk to the national committee, and his assistant clerks, and the travelling expenses of the atter.

As to (ii), this part of the cost of the scheme would undoubtedly prove much the heavier. Nevertheless, the legal aid bureaux would have, it is estimated, a substantial income from the fees they would charge to the people who could afford to pay something, and it is not by any means fanciful to suggest that such receipts would in most cases more than cover the cost of upkeep, including salaries of personnel.

A further substantial set-off against the expenses of running the scheme would be the receipts from fees on practising certificates, and stamps on articles and admissions.

3. *General Observations.*

(1) These observations, and the Haldane Society proposals themselves, necessarily rest on the premise that a legal aid scheme showing improvement over the present system is desirable. Indeed, such a premise is nherent in the fact that the matter is being inquired into. It was submitted that it is beyond doubt that a satisfactory legal aid scheme is a necessary part of any scheme of social security.

(2) The scheme would achieve the object of developing and making more generally available what are the two most successful features of present-day provisions for this kind of service—Citizens' Advice Bureau and the Poor Prisoners' Defence Act.

(3) In particular, the Haldane Society scheme would include in its benefits the lower middle classes, and the properly paid working classes who to-day are not catered for at all, and who are almost totally excluded from the courts in a great many cases.

(4) Any social service must cost something. The cost of the scheme s such that the benefit to the community would make the scheme very good value for money. The scheme would be generally regarded as a cheap form of social insurance, and would t nd to increase public respect for the law.

(5) It is submitted that the Haldane Society scheme is a particularly simple one, and cannot be laid open to a charge that it will tend towards bureaucracy.

Viewed as a whole, the scheme provides a standard organisation, under local control, but under central direction, to deal with legal advice and aid in all branches of the law.

Attention must be drawn to the fact that the organisation does not fall under any Ministry but is connected with the executive only through the Lord Chancellor. This arrangement is calculated to secure independence, and to preserve in the scheme some of the better atmosphere of the legal profession.

At the same time, the general outline of these suggestions for the composition of the district committees is calculated to preserve a good element of democratic control.

(6) Finally, it is submitted that the scheme would be an eminently easy one to put into effect. It would require a fairly short statute, rules made by the national legal aid committee under the Lord Chancellor, and the preservation of nearly the whole of the Poor Prisoners' Defence Act.

As to executive organisation, the number of personnel involved is small, and suitable personnel should be very easily available in every neighbourhood. Similarly, there would be no difficulty about premises.

Parliamentary News.

HOUSE OF LORDS.

Housing (Scotland) Bill [H.C.].
Read First Time. [3rd October.

Housing (Temporary Accommodation) Bill [H.C.].
Read Second Time. [5th October.

Matrimonial Causes (War Marriages) Bill [H.L.].

To confer on the High Court in England and the Court of Session in Scotland, and to provide for conferring on the High Court in Northern Ireland, temporary jurisdiction in certain matrimonial causes where the relevant marriage took place on or after the 3rd September, 1939, and to provide for recognition of certain decrees and orders in matrimonial causes in all British courts.

Read Second Time. [5th October.

HOUSE OF COMMONS.

London Midland and Scottish Railway Bill [H.L.].
Reported with Amendments. [5th October.

London Midland and Scottish Railway (Canals) Bill [H.L.].
Reported with Amendments. [5th October.

Town and Country Planning Bill [H.C.].
In Committee. [5th October.

QUESTIONS TO MINISTERS.

Transfer Deeds.

Mr. Liddall asked the Chancellor of the Exchequer whether he will take the necessary steps to so amend the Defence (Finance) Regulations, 1939, and the Trading with the Enemy Act, 1939, that, where certain declarations printed on the back of transfer deeds have to be signed, this may be done not only by bankers, stockbrokers and solicitors, but by all holders of principals' licences issued by the Board of Trade.

Sir John Anderson: The declaration in question is called for under the Defence (Finance) Regulations, and its form has been designed to meet the convenience of the public. After careful consideration I am not satisfied that any inconvenience to the public is caused by the existing limitations, which reflect the importance which I must attach in present circumstances to the declarations regarding residence and enemy interest. The whole matter will, however, be considered afresh in the light of post-war requirements, and the suggestion made by my hon. friend will certainly not be overlooked. [3rd October.

Revision of Statutes.

Sir Thomas Moore asked the Attorney-General whether he will institute a survey of Acts of Parliament over 100 years old in order to ascertain which are appropriate to present-day conditions.

The Attorney-General: While it would not be practicable to adopt the suggestion made by my hon. friend at the present time, my noble friend the Lord Chancellor and I are considering what steps could be taken to improve the present state of the Statute Book, and I hope to make a statement in due course. [4th October.

Rents Control.

Mr. Kirby asked the Minister of Health whether he will establish rent courts or tribunals throughout the country for the purpose of preventing abuses of the Rent Restriction Acts and providing tenants with a legal form of appeal against overcharging by landlords.

Mr. Willink: I cannot consider what action should be taken in this matter until the Report of the Inter-Departmental Committee on Rent Control is available. I understand that amongst the suggestions which have been made to the Committee is that of the establishment of rent courts or tribunals. [5th October.

Income Tax Frauds.

Major Studholme asked the Chancellor of the Exchequer what is the present practice of the Commissioners of Inland Revenue in regard to instituting criminal proceedings for alleged frauds on the revenue.

Sir John Anderson: The practice of the Commissioners in this matter is governed by s. 34 of the Finance Act, 1942, which makes provision for the admissibility in evidence of any disclosure made in the circumstances there set out. As the section indicates, the Commissioners have a general power under which they can accept pecuniary settlements instead of instituting criminal proceedings in respect of fraud or wilful default alleged to have been committed by a taxpayer. They can, however, give no

undertaking to a taxpayer in any such case that they will accept such a settlement and refrain from instituting criminal proceedings even if the case is one in which the taxpayer has made full confession and has given full facilities for investigation of the facts. They reserve to themselves complete discretion in all cases as to the course which they will pursue, but it is their practice to be influenced by the fact that the taxpayer has made a full confession and has given full facilities for investigation into his affairs and for examination of such books, papers, documents or information as the Commissioners may consider necessary.

The above statement of the Commissioners' practice should be regarded as replacing the one made by my predecessor on the second reading of the Finance Bill, 1942, which has, I understand, given rise to some misapprehension. [5th October.

REINSTATEMENT OF EMPLOYEES.

Major DIGBY asked the Minister of Labour how his regulations define the obligations of an employer under the Reinstatement in Civil Employment Act in a case where both the employer and the employees are serving in the Forces and some of the employees are demobilised before the employer.

Mr. ERNEST BEVIN: I have no power to make regulations defining the obligations of an employer under the Reinstatement in Civil Employment Act. The Act itself places an obligation on an employer to make employment available at the first opportunity, if any, at which it is reasonable and practicable to do so. [5th October.

BRITISH NATIONALITY (ENEMY ALIENS).

Mr. PRITT asked the Secretary of State for the Home Department whether he will reconsider his decision not to entertain applications for naturalisation by enemy subjects during the war and will proceed now to examine such exceptional cases as arose among persons with long anti-Nazi records and good service to this country in the Armed Forces or other important capacity.

Mr. HERBERT MORRISON: The current policy of suspension of naturalisation has at no time been confined to operate only against enemy subjects. It has equally affected nationals of Allied or neutral States, very many of whom have given valuable aid to the Allied cause in various capacities. As I have previously stated, in view of the need for concentrating the services of the Home Office staff and of the police on work which is essential in war-time, naturalisation has had to be suspended except as regards applications from British born women and a few exceptional cases where an individual's immediate naturalisation is required in the national interest for special purposes connected with the war effort.

Sir JOCELYN LUCAS asked the Secretary of State for the Home Department if the children of refugees from Nazi oppression who have only been granted temporary hospitality in this country acquire British nationality by reason of having been born in this country.

Mr. HERBERT MORRISON: Yes, sir. The national status of persons born in His Majesty's Dominions is not affected by the fact that their parents may only be there temporarily. [5th October.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 1102. **Apparel and Textiles.** The Linings (Use of Utility Cloth) (No. 2) Directions. Sept. 26.

E.P. 1116. **Control of Building and Engineering Contracting Undertakings.** The Building and Civil Engineering Labour (Returns) Order, Sept. 28.

E.P. 1112. Control of Building Operations (No. 2) Order, Oct. 2.

E.P. 1120. **Control of Motor Fuel** Order. General Licence (Coupon Free Deliveries) No. 1, Sept. 22.

E.P. 1119. **Essential Work** (Evacuation) (No. 2) Order, Sept. 26.

E.P. 1088. **Food.** Flour Order, Sept. 18, amending the Flour Order, 1944.

E.P. 1095. Food. Potatoes Order, Sept. 22, amending the Potatoes (General Provisions) Order.

E.P. 1094. Food. Potatoes (1944 Crop) (No. 2) Order, Sept. 22.

E.P. 1060. **Footwear Repairs** (Control) (No. 3) Order, Sept. 22.

E.P. 1108. **Regional Commissioners** (Power of Detention) Order, Sept. 27.

No. 1106. **Supreme Court** (Northern Ireland) Procedure. Order of the Lord Chief Justice of Northern Ireland.

DRAFT STATUTORY RULES AND ORDERS, 1944.

Education, England and Wales. Schemes of Divisional Administration (Notices) Regulations, Sept. 21.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

Honours and Appointments.

The Lord Chancellor has appointed Mr. HAROLD SEWARD PEARCE, C.B.E., one of the Assistant Solicitors to the Post Office, to be a Taxing Master of the Supreme Court in succession to Master Rivington, retired.

The Lord Chancellor has appointed Mr. SAMUEL TURNER HADDELSEY, Registrar of the Lincoln and Horncastle, Gainsborough, Market Rasen and Caistor and Newark County Courts and District Registrar in the District Registry of the High Court of Justice in Lincoln, to be, in addition, Registrar of the Grantham County Court; CLAUDE WILLIAM MARSHALL, Registrar of the Colchester, Clacton and Halstead, Harwich, Halesworth and Saxmundham, Ipswich, Stowmarket and Woodbridge and Felixstowe County Courts and District Registrar of the District Registry of the High Court of Justice in Colchester and Ipswich to be, in addition, Registrar of the Maldon County Court; Mr. ERNEST BARTON PROUD, Registrar of the Barnard Castle, Bishop Auckland and Durham County Courts and District Registrar in the District Registry of the High Court of Justice in Durham, to be, in addition, Registrar of the Darlington, Leyburn, Northallerton, Richmond and Thirsk County Courts. These appointments take effect rom 1st October, 1944.

Notes of Cases.

COURT OF APPEAL.

Jenkins Productions, Ltd. *v.* **Inland Revenue Commissioners.**

Lord Greene, M.R., MacKinnon and Luxmoore, L.JJ. 17th March, 1944.

Revenue—Excess profits tax—Standard profits—Determination of accounting period for purpose of calculating standard profits—Whether determination of accounting period on basis of successive accounting periods of twelve months or successive accounting periods of six months—Finance Act, 1937 (1 *Edw.* 8 *& Geo.* 6, *c.* 54), *s.* 20 (2) (*a*) (*c*)—*Finance* (*No.* 2) *Act,* 1939 (2 *& 3 Geo.* 6, *c.* 109), *ss.* 13, 14, 22 (*e*), (*f*).

Appeal from the judgment of Macnaghten, J.

This was an appeal from the decision of Macnaghten, J., reversing the decision of the Special Commissioners confirming an assessment to excess profits tax made on the J company under the provisions of Pt. III, Finance (No. 2) Act, 1939, in the sum of £1,207 11s. 9d. Excess profits are the amounts whereby the profits arising from a trade or business computed in the manner directed by the Act for a "chargeable accounting period," as defined by s. 22 (*e*), exceed the standard profits which are computed in the same way for its standard period, as defined by s. 13. The company, as it was entitled to under s. 13 (4), chose the year 1935 as its standard period. It was, therefore, necessary for the purpose of the assessment in question to ascertain the profits of the company for the year 1935. Under the somewhat complicated provisions of the Finance Act, 1937, s. 20 (2), the Finance (No. 2) Act, 1939, s. 14 (1), and s. 22 (*f*), the ascertainment of the company's profits for the year 1935 depended on the question whether the accounts of its business were "made up for successive periods of twelve months" within the meaning of those words in the Act of 1937, s. 20 (2) (*a*), or whether they should be made up for other successive periods within the meaning of s. 20 (2) (*c*). The subsection had reference to national defence contribution, it being provided by s. 22 (*f*) of the 1939 Act that both the standard and chargeable accounting periods of a trade or business should be determined in the same manner as the accounting periods are determined by s. 20 (2) of the 1937 Act. That subsection provides as follows: "(2) For the purposes of national defence contribution, the accounting periods of a trade or business shall be determined as follows—(*a*) in the case where the accounts of the trade or business are made up for successive periods of twelve months, each of those periods shall be an accounting period; . . . (*c*) in any other case the accounting periods of a trade or business shall be such periods not exceeding twelve months as the Commissioners of Inland Revenue may determine; . . ." The company's accounts were prepared half-yearly, namely, for the periods 1st January to 30th June and 1st July to 31st December respectively, but at the annual general meeting of the company only a yearly account was presented, made up to 30th June of the respective year and based on the accounts of the half-years ending 31st December and 30th June respectively. The Special Commissioners held that the accounts were made up for the successive periods of twelve months ending 30th June, and, therefore, in accordance with the provisions of the proviso to s. 14 (1) of the 1939 Act, in order to ascertain the profits of the standard period, namely, the year 1935, they made an aggregation apportionment of the profits for the two accounting years ending 30th June, 1935, and 30th June, 1936, respectively, by adding the profits for those two years together and dividing by two. The proviso to s. 14 (1) is as follows: "Provided that, where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the trade or business for any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid" (i.e., separately on income tax principles: see subs. (1)) "and such division and apportionment of those profits or losses, and such aggregation of those profits or losses, or any apportioned part thereof, shall be made as appears necessary to arrive at the profits arising in the standard period or chargeable accounting period; and any such apportionment shall be made in proportion to the number of months, or fraction of months, in the respective periods, unless the Commissioners, having regard to any special circumstances, otherwise direct." During the six months of 1936 ending 30th June, 1936, the company sustained a considerable loss, and the inclusion of that half-year in the periods taken, for the purpose of ascertaining the profits of the "standard year" made the "standard profits" less than they would have been if the profits actually made in 1935 had been taken as the standard profits, and they contended that the accounts were made up for successive periods of six months, namely, 1st January to 30th June and 1st July to 31st December, 1935. Macnaghten, J., held that the accounts in question were not "accounts made up for successive periods of twelve months" within the meaning of s. 22 (2) (*a*), Finance Act, 1937, but they were only made up for periods of six months, and that the Commissioners had erred on a matter of law in deciding otherwise. The Crown appealed.

LORD GREENE, M.R., said the account presented to the annual general meeting of the company was a truly made up twelve-monthly account within the meaning of s. 20 (2) (*a*) of the Act of 1937, even though it contained the results of the six monthly accounts. The six monthly accounts were prepared merely for the convenience of the directors, but the twelve-monly account submitted at the annual general meeting was a final account, and was submitted in pursuance of a statutory obligation. The view taken by Macnaghten, J., in favour of the company could not, therefore, be

supported. However, although nothing which the court said could bind the Commissioners of Inland Revenue in the exercise of the discretion given to them by the proviso to s. 14 (1) of the Act of 1939, nevertheless it was right in the circumstances to point out that in this case it was possible to find out the exact amount of the standard profits during the standard period of 1935 without resorting to the method of aggregation and appropriation referred to in the proviso which found favour with the Commissioners, and which no doubt in ordinary circumstances as a rough and ready rule was a sufficiently accurate method of ascertaining the standard profits. Consequently the practical question as to what amount of excess profits tax was payable would stand over until the Commissioners had reconsidered the case in the light of what the court had said.

MACKINNON and LUXMOORE, L.JJ., concurred. Appeal allowed. Case remitted to the Commissioners for reconsideration.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*; *N. E. Mustoe*.

SOLICITORS: *Solicitor of Inland Revenue*; *Nordon & Co.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Heaney *v.* B. A. Collieries, Ltd.

Scott, Luxmoore and du Parcq, L.JJ. 27th July, 1944.

Master and servant—Workmen's compensation—Reservist called up for army service—Previously incapacitated by accident at work—Army pay and allowances in excess of earnings after accident—"Able to earn"—Workmen's Compensation Act, 1925 (15 & 16 *Geo.* 6, *c.* 84), *s.* 9 (3) (i).

Appeal from an award made by the county court judge at Nottingham, sitting as arbitrator under the Workmen's Compensation Act, 1925.

The appellant had suffered disablement as the result of an accident at work on 18th November, 1937, and was totally incapacitated until early in March, 1938, during which period his employers paid him the full rate of compensation for total incapacity. From March, 1938, to 2nd September, 1939, the appellant worked intermittently at light occupations with his employers, earning much less than his pre-accident earnings, which were £5 4s. 1d. per week, and receiving compensation from time to time on the basis of partial incapacity. On 3rd September, 1939, he was called to the colours as an army reservist, and his pay and allowances since that date had been less than his pre-accident earnings, but more than he would have been able to earn outside the armed forces. The learned county court judge expressed doubt whether *Jones* v. *Amalgamated Anthracite Collieries, Ltd.* [1944] A.C. 14, which dealt with the case of a conscript, necessarily covered the case and concluded that the figure to be taken under s. 9 (3) (i), though primarily the amount of the army pay and allowances, must, if it is higher, be the amount which the applicant could earn in suitable employment if not in the army.

DU PARCQ, L.J., reading the judgment of the court, said that it was well settled that the words "which he is earning" were not qualified by the later words "in some suitable business or employment." If a workman was in fact earning money in any capacity, the general rule was that the amount which he was earning must be the basis of the calculation which fell to be made. This general rule had been applied to the pay and allowances of a man who had voluntarily enlisted in the army (*Port of London Authority* v. *Gray* [1919] 1 K.B. 65; *Doncaster Amalgamated Collieries* v. *Leach* [1941] 1 K.B. 649). The general rule was, however, subject to a necessary exception. If a man chose to take work at a low rate of pay, when he could get better paid work, or if he chose to be idle and do less work than might reasonably be expected of him, and so kept down his wages, then his actual earnings could not be taken as the basis of the calculation. The peculiarity of *Jones*' case, *supra*, was that the workman had not elected, but had been compelled to take work for lower pay than he could have earned in other employment. The decision of the House of Lords was that, in the circumstances, his "earnings" in the army could not be treated as the basis of the calculation. No distinction could be made between the volunteer and the conscript. When, however, either by his own act, or because of some external cause, the workman was so fortunate as to be paid a higher wage than otherwise he could have earned, the principle to which effect was given in *Jones*' case could have no application. The first question always was: "Has the workman suffered any loss owing to his incapacity?" If his earnings were in fact as great as or greater than they were before the incapacity had been incurred, the answer was "No." If his present earnings were less than before the incapacity was incurred, he had suffered a loss, and the next question was: "Was the loss due, not to the incapacity, but solely to some other cause?" In *Jones*' case the answer was that the reduction was not in any degree due to the incapacity. When, as here, the reduction in earnings was not greater, but less, than it would have been but for the fact that he had obtained employment of a special kind, his actual earnings must always remain the proper basis of the calculation. The appeal must be allowed and the matter remitted to the county court judge in order that he might ascertain the average weekly amount which the workman was earning, or was able to earn, in some suitable employment or business between 5th March, 1938, and 2nd September, 1939.

COUNSEL: *Beney*, K.C.; *Dare*; *Diplock*.

SOLICITORS: *Taylor, Jelf & Co.*, for *Hopkin & Son*, Mansfield; *Peacock and Goddard*, for *Brown, White & Pears*, Nottingham.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION.

Young *v.* Minister of Pensions.

Tucker, J. 11th July, 1944.

Emergency legislation—Personal Injuries (Civilians) Scheme—Hysteria following sight of bombed home—Earlier organic disease—War injuries—Physical injury—Organic disease—Aggravation thereof—Tribunal's finding of fact—Personal Injuries (Emergency Provisions) Act, 1939 (2 & 3 *Geo.* 6, *c.* 82), *ss.* 1 *and* 8—*Pensions (Mercantile Marine) Act*, 1942 (5 & 6 *Geo.* 6, *c.* 26), *s.* 5.

Appeal from No. 6 Pensions Appeal Tribunal on a case stated by the chairman of that tribunal under the Pensions Appeal Tribunals Act, 1943.

The appellant had applied to the Minister of Pensions for an award in respect of disablement in respect of persons not gainfully occupied, under the Personal Injuries (Civilians) Scheme. Section 1 of the Personal Injuries (Emergency Provisions) Act, 1939, enables the Minister to make a scheme for payments in respect of the following injuries sustained during the period of the present emergency: (*a*) "war injuries sustained by gainfully occupied persons" with certain exceptions, "and by persons of such other classes as may be so specified." The section also permits provision to be made in the scheme for payment to injured persons by way of pension or grant which shall be payable only where the injury causes serious and prolonged disablement or death. In Pt. IV, cl. 12 (2), of the scheme "disablement" is defined in relation to a gainfully occupied person who has sustained a war injury, or a civil defence volunteer who has sustained a war service injury, as meaning physical or mental injury or damage, or loss of physical or mental capacity, caused by that injury. As a result of subsequent provisions in the scheme, that definition applies also to non-gainfully occupied persons. Section 8 of the Personal Injuries (Emergency Provisions) Act, 1939, defines "war injuries" as meaning physical injuries (*a*) caused by (i) the discharge of any missile (including liquids and gas); or (ii) the use of any weapon, explosive or other noxious thing; or (iii) the doing of any other injurious act; either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or (*b*) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of or for the benefit of, His Majesty or any allied power, or any part of, or anything dropped from, any such aircraft. "Physical injury" was declared by s. 5 of the Pensions (Mercantile Marine) Act, 1942, to include "tuberculosis and any other organic disease, and the aggravation thereof." At the age of sixteen the applicant underwent X-ray treatment which caused an artificial menopause and a highly nervous and hysterical condition resulted for some time, from which condition she was still suffering in 1940. In September, 1940, the house where she was residing was blasted by a bomb dropped from an enemy aeroplane while she was in an air-raid shelter a short distance away. On returning home she was greatly shocked to see the damage, with the result that her nervous condition was aggravated and she had to receive hospital treatment for hysteria. The tribunal found that there had been no aggravation of an organic disease.

TUCKER, J., said that on the facts it was impossible to say that the tribunal had come to an erroneous decision. The applicant had not suffered any physical injury within the Personal Injuries (Emergency Provisions) Act, 1939, as it stood before the amendment in the Pensions (Mercantile Marine) Act, 1942. Furthermore, her aggravated condition was not caused by any of the matters mentioned in the Personal Injuries (Emergency Provisions) Act, 1939. The mental disturbance brought about by the sight of a bombed property was too remote to amount to a cause within the definition. Aggravation due to merely the mental disturbance arising from the sight of the bombed property would be too remote, and another difficulty was that hysteria had been found as a fact to be a functional disturbance and not an organic disease. The tribunal included a medical member and found that the hysteria which was an after-effect of the X-ray treatment and of any resulting organic change was not itself an organic disease, but a functional disorder, and it was impossible to say that in coming to that finding the tribunal had erred in law. The appeal must be dismissed.

COUNSEL: *H. C. Dickens*; *The Attorney-General* (Sir Donald Somervell, K.C.), and *Valentine Holmes*.

SOLICITORS: *G. W. White*, East Sheen; *The Treasury Solicitor*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Court Papers.

Supreme Court of Judicature.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Morton.
Mon., Oct. 16	Mr. Blaker	Mr. Hay	Mr. Farr
Tues., 17	Andrews	Farr	Blaker
Wed., 18	Jones	Blaker	Andrews
Thurs., 19	Reader	Andrews	Jones
Fri., 20	Hay	Jones	Reader
Sat., 21	Farr	Reader	Hay

	Group A.		Group B.	
Date.	Mr. Justice Cohen. *Witness.*	Mr. Justice Vaisey *Non-Witness.*	Mr. Justice Uthwatt *Witness.*	Mr. Justice Evershed *Non-Witness.*
Mon., Oct. 16	Mr. Jones	Mr. Reader	Mr. Blaker	Mr. Andrews
Tues., 17	Reader	Hay	Andrews	Jones
Wed., 18	Hay	Farr	Jones	Reader
Thurs., 19	Farr	Blaker	Reader	Hay
Fri., 20	Blaker	Andrews	Hay	Farr
Sat., 21	Andrews	Jones	Farr	Blaker